

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15317, as amended, of Bruce and Nora Landerman, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirements (Sub-section 404.1) for a deck and one-story addition to a dwelling in an R-3 District at premises 2906 Cortland Place, N.W., (Square 2103, Lot 806).

HEARING DATE: June 13, 1990
DECISION DATE: July 11, 1990

ORDER

FINDINGS OF FACT:

1. The subject property is located on the west side of Cortland Place, N.W. between 29th Street and Klinge Road, N.W. It is known as premises 2906 Cortland Place, N.W., located in an R-3 District.

2. The subject property is comprised of Lot 806 in Square 2103. The lot is pentagonal in shape and consists of approximately 3,052 square feet of land area. The lot has an average width of 35 feet and a depth of approximately 100 feet. A 16-foot wide alley abuts the property to the rear. The lot is improved with a two-story plus basement semi-detached house. A two-car garage is located on the rear portion of the house. A driveway to the garage occupies almost the entire rear yard.

3. The general area is characterized by semi-detached single-family dwellings and cluster houses, two semi-detached houses and one rowhouse.

4. The applicants' initial proposal was to expand the existing 115 square-foot sunroom by approximately 80 square feet. It would extend 22 inches into the rear yard. The applicants also proposed to construct a deck off from the sunroom. The deck would be about eight feet above the existing driveway at the rear. It would contain approximately 425 square feet in surface area. It would be screened with latticework on three sides. The latticework would be placed from the floor to the top of the deck. The entire new structure would extend 13 feet into the required rear yard, leaving seven feet between the end of the deck and the rear lot line.

5. Upon review of these initial plans, the Zoning Administrator issued a memorandum dated March 28, 1990 indicating that the applicants would need a lot occupancy variance of 441.88 square feet and a 13-foot variance from the rear yard requirements.

In R-3 Districts, a lot occupancy of 40 percent is allowed and a rear yard of 20 feet is required.

6. After discussing their proposal with some of their neighbors, the applicants modified the initial plans by lowering the deck to 6 feet, 10 inches above the driveway and removing the latticework above the center railing on the deck. The latticework will now only extend 3 1/2 feet above the deck floor.

7. Upon review of the modified plans, the Zoning Administrator issued a revised memorandum dated June 12, 1990 which corrected errors in calculation in the March 28, 1990 memorandum and eliminated the need for a lot occupancy variance. Therefore, only the rear yard variance is needed.

8. The applicants maintained that there are practical difficulties that arise from the unique characteristics of their lot. They pointed out that the pentagonal shape of their lot is unusual and that they are unaware of any other such lots in their neighborhood. They testified that there is a building restriction line in front of the property and the house is set back from the front property line by approximately 30 feet creating a very small rear yard. Finally, they noted that the driveway occupies the entire rear yard, rendering it unuseable for other purposes. Other properties throughout the neighborhood have some useable rear yard. They maintained that their circumstances are unique and difficult.

9. The applicants testified that the proposed addition will not adversely impact the area. The modifications were made to minimize the impact of the new structure. The deck was lowered and part of the trellis was removed to allow for more light and air. The applicants testified that the design will be compatible with what presently exists. They also testified that the proposed structure is less obtrusive than what could be done as a matter-of-right. Any matter-of-right construction could take place on the left (southern) side of the lot and would displace the substantial greenery located there. Such an addition would also be located closer to the adjacent neighbor and would be visible from the street. The applicants are of the view that the proposed addition would be preferable. They also note that a number of their neighbors are in favor of their application.

10. The Office of Planning (OP), by memorandum dated June 6, 1990, recommended denial of the application as initially proposed. Because the modified plans were not made until June 13, 1990 at the public hearing, OP did not have an opportunity to review them before submitting their report.

OP pointed out that the property is located in an R-3 District which permits matter-of-right development of single-family residential uses, including detached and semi-detached dwellings,

with a minimum lot area of 3,000 square feet, a minimum lot width of 20 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

OP believes that the property is not unique and that a practical difficulty related to the property itself cannot be ascertained. OP stated that although the lot is pentagonal in shape, it is among the largest lots in the area. It is also similar in shape, topography and physical characteristics to other properties in the area.

OP pointed out that it does not oppose the sunroom addition, but with regard to the deck, OP believes that the size of the lot allows for other alternatives. The applicant could build a 4-foot deep addition along the entire rear of the property without the need for an area variance. Also, the driveway could be reconfigured to make the rear yard more useable.

OP is of the opinion that the relief cannot be granted without creating an adverse impact on the area. Because of the larger lot size, the subject lot can accommodate a larger structure as a matter-of-right than other lots in the area. Finally, OP's report stated that the two variances combined were excessive and that to grant the relief would impair the intent, purpose and integrity of zone plan by allowing a much larger structure than is appropriate for this area of the city.

11. At the public hearing, after hearing the applicants' revised proposal, OP testified that it was pleased with the elimination of the request for a lot occupancy variance. However, OP remained of the opinion that the property is not unique and that there is no practical difficulty related to the property. OP stated that the alleyway is green and spacious and that the proposed deck would close it off creating adverse visual impacts and impairing the flow of light and air. The modified proposal to eliminate the latticework at the upper portion of the deck mitigates, but does not eliminate, the condition described. Although OP remains unopposed to the sunroom, OP believes that the burden of proof for the rear yard variance has not been met.

12. By memorandum dated May 8, 1990, the Department of Public Works stated that the subject proposal has no transportation impacts; therefore, the department is not opposed to it.

13. Advisory Neighborhood Commission (ANC) 3C, by report dated June 6, 1990, expressed its opposition to the proposed additions. In its resolution the ANC stated that:

There is justifiable neighbor opposition to this proposed variance. The proposed deck would be a major projection almost all the way to the edge of the alley. The ANC opposes

this variance, among other reasons, because the applicant has not demonstrated that the present zoning imposes a hardship or practical difficulty on the applicant, or that the lot is unique or otherwise presents an exceptional condition to warrant an exception in this case. It should also be noted that the proposed English Village Historic District would encompass this particular street and alley.

ANC 3C stated that the applicant has not met any of the prerequisites for granting the relief and recommended that the application be denied.

At the the public hearing, ANC 3C noted that their June 6, 1990 report was written before the application was modified. The ANC requested that the Board leave the record open to allow for a report on the revised plans. The Board granted the request and ANC 3C submitted a report dated June 28, 1990 and a resolution from the ANC meeting of June 25, 1990. In the report, the ANC cited two cases to support their position to oppose the revised plans. Silverstone v. Board of Zoning Adjustment, 372 A.2d 1286 (1977), was cited for the proposition that a variance cannot be granted where the building can be put to a reasonable use consistent with applicable zoning. In Barbour v. Board of Zoning Adjustment, A.2d 326 (1976), the court noted that because the owner of the property had two alternative methods of construction which would have fully complied with the Zoning Regulations, denial of the variance was necessary. Quoted from Assoc. for Preservation of 1700 Block of N Street v. Board of Zoning Adjustment 384 A,2d 674 (1978).

Responding to the applicants' contention that the proposed addition would be preferable to what could be done as a matter-of-right, the ANC stated that consideration of the matter on this basis would be inappropriate.

14. The resolution submitted by ANC 3C set forth the following issues and concerns:

- Two primary features of the original plans remain unchanged: extension of the house into the required 20' rear yard, and addition of a deck extending over virtually the entire rear yard.
- Neither the lot nor the existing house is non-conforming;
- The lot is larger than minimally required in the R-3 District;
- The lot dimensions, including width, exceed the minimum requirements;
- The house could be enlarged without a variance;

- The shape of the property does not create a practical difficulty for the applicants;
- The rear yard is not "unuseable" as claimed by the applicants;
- The lot is adequate for providing housing in full compliance with the Zoning Regulations governing R-3 Districts. The house could be enlarged without a variance;
- Any hardship is due solely to the desire of the applicants to have a sunroom and deck. However, this does not constitute an exceptional practical difficulty within the meaning of the Zoning Regulations;
- The existence of a few similar deck structures on houses in the area does not establish that the variance can be granted without impairing the zone plan.

ANC 3C is of the opinion that to grant the variance would impair the zone plan.

15. One neighbor residing at 2901 Cortland Street, N.W., representing himself and his wife, testified and submitted a letter in support of the application. Their residence is diagonally southwest across Cortland Street from the applicants' property. The supporting neighbor noted that the property is located in an area that is currently being studied for application for historic designation. He noted that the applicants could build, as a matter-of-right, an addition to the front and side of their house. He indicated that he and his wife would prefer that the applicants build pursuant to their proposed plans because a matter-of-right alternative could easily undermine the integrity of the neighborhood from a design standpoint, potentially jeopardizing historic designation. In this neighbor's view, the historic designation circumstances effectively limit the applicants' full use of their property.

16. Neighbors residing at 2916 29th Street, N.W., by letter dated June 8, 1990 and through testimony at the public hearing, expressed opposition to the original proposal. The rear of their house faces the side of the applicants' property. They believe that the structure will have an adverse impact and a number of concerns were expressed. They stated that the extension is monumental in size. It will close off the alley that is mostly open and filled with greenery. It will block their view of the alley and dwarf most of the existing structures backing the alley. They also fear that the addition will lower the value of their property.

These opposing neighbors submitted a post-hearing letter dated June 27, 1990, to respond to the applicants' revised plans. They remain in opposition because they believe that the extension is still too large. They stated that the neighbors in support are either not close enough to the applicants' property to be affected or they wish to construct an addition on their own houses. The opposing neighbors are concerned that to grant this application will open the door for more variances to be requested and granted in the future. Finally, they indicated that the applicants' matter-of-right options should not form the basis of the Board's decision.

17. The residents of 2914 29th Street, N.W., by letter dated June 6, 1990 and through testimony at the public hearing, expressed opposition to the application. They indicated that the back of their house faces the side of the applicants' house and the addition would be visible to them. They are of the view that the applicants fail to meet the burden of proof under the Zoning Regulations. They stated that there is no unique condition. The applicants' residence and lot are substantially the same as ten other semi-detached residences on Cortland Place. Seventeen other residences on Cathedral Avenue also have the same configuration. All of these houses have, or had provisions for a garage beneath the house. None of the conditions set forth by the applicant uniquely affect the applicants' property.

The opponents stated that the applicants have not identified a practical difficulty to support a variance. They further stated that substantial detriment to the public good and to the purpose and intent of the zone plan would result from granting the variances. They believe that the proposal is not a minor change but one that will substantially reduce the open space that the zoning plan insures. They were also concerned that granting the relief would set a precedent for others to build additions in the future.

18. By letter dated June 28, 1990, these neighbors responded to the applicants' revisions. They described the modifications, stating that they are not substantial. They continue to oppose the application as modified.

19. The neighbor residing at 2905 Cathedral Avenue, N.W. submitted a letter dated June 9, 1990 and testified at the public hearing in opposition to the application. He associated himself with the views expressed by other opposing neighbors. By letter dated June 25, 1990, this opposing neighbor expressed his opposition to the revised plans. He stated that the proposed addition and deck would be entirely inconsistent with the plan for the neighborhood.

20. Four other letters in opposition to the application were submitted into the record. No other letters in support were received.

21. By letter dated July 5, 1990, the applicants responded to some of the issues raised at the public hearing. They reiterated the facts which they believe constitute uniqueness and a practical difficulty, namely the building restriction line in the front, the front setback that creates a small rear yard, the unuseable rear yard and the pentagonal shape of the property. With regard to visibility the applicants stated that they have planted fast growing Leland Cypress trees along their side property line. These trees, they maintain, will block the view of the alley and the proposed addition/deck in a matter of a few years. The applicants pointed out that only six of 27 neighbors within 200 feet of their property object to their proposal. Finally, the applicants stated that their matter-of-right options would be more detrimental to the neighborhood than what they could do with the variance. As a consequence, strict application of the Zoning Regulations would result in particular and exceptional difficulties, i.e. building in the front/side yard, inconsistent with the pending historic designation. They state that while this is not the basis of their argument, it certainly strengthens it.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking variances from the area requirements of the Zoning Regulations. Granting such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board is of the opinion that no unique condition exists which creates a practical difficulty for the applicants in the use of their property consistent with the Zoning Regulations. Neither the front building restriction line, the substantial setback or the pentagonal shape of the property makes the applicants unable to construct an addition on the structure as a matter-of-right.

The Board does not agree with the applicants' assertion that the rear yard is unuseable. While the applicants may be unable to use the rear yard for the purpose desired, they have been and are currently using it as a driveway for the two-car garage.

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The Board concludes that it is inappropriate to find that the location of a structure in an historic district constitutes a unique condition since all structures located therein must meet the same standards. The Board further concludes that in deciding variance cases it is not appropriate to compare what is proposed with what is permitted as a matter-of-right and select the alternative with the least impact. The Board must base its decision solely on the standards set forth in 11 DCMR 3107.2. The evidence of record must meet these requirements regardless of the fact that less adverse alternatives might exist.

Having found no practical difficulty in the subject application the Board concludes that it is unnecessary to address the remaining requirements.

The Board concludes that it has afforded ANC 3C the "great weight" to which it is entitled.

In accord with the foregoing, the Board concludes that the application is hereby DENIED.

VOTE: 3-0 (Paula L. Jewell, William F. McIntosh and Charles R. Norris to deny; Carrie L. Thornhill abstaining).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

JAN 24 1992

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15317Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JAN 24 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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Mr. & Mrs. Lindsley Williams
2901 Cortland Place, N.W.
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Mr. & Mrs. Edward La Farge
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Mr. & Mrs. Robert L. Martin
2914 - 29th Street, N.W.
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Rosalyn Doggett, Chairperson
Advisory Neighborhood Commission 3-C
2737 Devonshire Place, N.W.
Washington, D.C. 20008


MADELIENE H. ROBINSON
Acting Director

DATE: JAN 24

15317Att/bhs